National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Martin M. Arlook, Regional Director, Region 10; Robert E. Allen, Associate General Counsel, Division of Advice

United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the U.S. and Canada (Johnson Yokogawa Corp.) Cases 10-CC-1318, 1-2, 10-CE-20

177-1642, 584-1275-6700, 584-2588, 584-5000

These cases were submitted for advice as to whether: the collective-bargaining agreement contains provisions prohibited by Section 8(e) of the Act and otherwise outside the construction industry proviso; whether the Union's grievance and request for arbitration seeking to enforce the "Scope of Work" provision constitutes coercion within the meaning of Section 8(b)(4)(ii)(A) and (B); and whether the employers are either single employers or alter egos.

We agree with the Region that the wording of the "Scope of Work" provision is secondary and violates Section 8(e). This provision, which is similar to the provisions that the General Counsel has attacked as unlawful in Manganaro, prohibits JCI from doing business with anyone who does not agree to apply all the terms of the Agreement.1 This provision does not merely limit JCI from subcontracting or otherwise doing business with firms whose employees are paid wages and fringe benefits equivalent to those set forth in the Agreement or otherwise protect the integrity of or address the labor relations policies of employers party to the Agreement. Rather, the clause requires JCI to boycott the services of nonsignatory employers in order to influence the labor relations policies of those employers. The clause is therefore secondary and falls within the general prohibition of Section 8(e).

We further agree with the Region that the clause is not privileged by the construction industry proviso to Section 8(e). In addition to the reasons cited by the Region, we note that Article XIII (Subcontracting) of the Agreement prohibits JCI from subcontracting work covered by the Agreement to be performed at the site of construction unless the subcontractor has an agreement with the Union. This is typical of the union-signatory subcontracting clause privileged by the proviso.2 Thus, it may be inferred that the "Scope of Work" clause is something other than a union-signatory subcontracting clause.

We also agree with the Region that the clause had a secondary application in this case because there is insufficient evidence that JYC is either a single employer or an alter ego of JCI.3

Since the "Scope of Work" clause is facially invalid, and JYC is not a single employer or an alter ego of JCI, we agree with the Region that the filing of a grievance and requesting arbitration to force JCI to extend the Agreement to JYC, without any other evidence of coercion, is coercive within the meaning of Sections 8(b)(4)(ii)(A) and (B).4

Accordingly, complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(4)(ii)(A) and 8(b)(4)(ii)(B) of the Act.

R.E.A.

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1 The "Scope of Work" provision provides that all provisions of the Agreement be effective on all work coming within the jurisdiction of the Union that is performed by the Employer, any joint venture of which the Employer is a part, or by any corporation or firm owned or financially controlled by, or action as agents for, the Employer. It is not limited to employers which are single employers or alter egos of JCI.

2 See Carpenters Local No. 944 (Woelke & Romero Framing, Inc., 456 U.S. 645 (1982), affirming in relevant part 239 NLRB

241 (1978).

3 See Texprint, Inc., 253 NLRB 1101 (1981); Los Angeles Newspaper Guild, Local 69 (San Francisco Examiner, Division of the Hearst Corp.), 185 NLRB 303, enfd. 443 F.2d 1173 (9th Cir. 1971).

4 International Union of Elevator Constructors (Long Elevator and Machine Co., Inc., 289 NLRB No. 132, enfd. 902 F.2d 1297 (8th Cir. 1990). For a discussion of the General Counsel's theory in this regard, see IBEW Local 113 (Henry J. Kaiser Co., Inc., Cases 27-CB-2838, 27 CC-824, Advice Memorandum dated January 28, 1991, pp. 14-17.